Paper No. 21

ALZA CORPORATION
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INTELLECTUAL PROPERTY DEPARTMENT
MOUNTAIN VIEW, CA 94039-7210

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JUN 2 0 2005

OFFICE OF PETITIONS

In re Application of   :
Cormier et al.   :
Application No. 09/190,887   :   ON PETITION
Filed: November 12, 1998   :
Attorney Docket No. ARC 2589 US CIP1   :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 10, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office action mailed February 4, 2002. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on May 5, 2002. A Notice of Abandonment was mailed October 7, 2002.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

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[1] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

[2] See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1). The amendment submitted to the examiner on February 10, 2005, failed to place the above-identified application in prima facie condition for allowance. A proper reply to a final rejection under 37 CFR 1.113 may be: (1) an amendment, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee); or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Petitioner must submit one of the above documents in order to revive the above-identified application. An Advisory Action issued by the examiner is enclosed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
                  Commissioner for Patents
                  Post Office Box 1450
                  Alexandria, VA 22313-1450

By hand: Customer Window located at:

                  U.S. Patent and Trademark Office
                  Customer Service Window Randolph Building
                  401 Dulany Street
                  Alexandria, VA 22314

By fax: (703) 872-9306
                  ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
  for Patent Examination Policy

cc: ALZA CORPORATION
             c/o JOHNSON & JOHNSON
             ONE JOHNSON & JOHNSON PLAZA, WH 3221
             NEW BRUNSWICK, NJ 08933

Enclosure: Advisory Action